

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

06 - 20741 CR - LENARD / TORRES

CASE NO.

18 U.S.C. § 1349

18 U.S.C. § 1341

18 U.S.C. § 1343

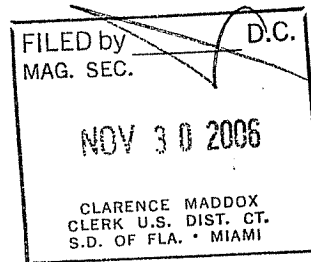
18 U.S.C. § 2

UNITED STATES OF AMERICA

vs.

ALLEN FIALKOFF,

Defendant.



INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At various times relevant to this Indictment:

1. MasterVend Marketing, Inc. ("MasterVend"), was a Florida corporation. MasterVend's principal place of business was in Miami-Dade County at 2020 NE 163rd Street, Suite 200, North Miami Beach, Florida.

2. MasterVend engaged in the sale of business opportunities to the public. MasterVend purported to sell "Sweet Tooth Sam" vending machines, and "snack and soda" vending machines, along with assistance in establishing, maintaining and operating a vending machine business.

3. MasterVend sales representatives performed various functions, including serving as "fronters," "closers," "loaders," and "back from the dead" or "BFD" salesmen. A "fronter" spoke

to potential purchasers when the potential purchaser initially contacted MasterVend in response to an advertisement. A "closer" subsequently spoke to potential purchasers. If the closer was unable to finalize a sale, a "BFD" salesman sometimes called the potential purchaser at a later time to try to bring the deal "back from the dead." Once a purchaser sent money to MasterVend to purchase the business opportunity, MasterVend would sometimes contact the purchaser to try to "load" the purchaser, that is, induce him or her to purchase more vending machines, usually at a discounted price. MasterVend used references who falsely held themselves out as successful MasterVend purchasers.

4. Defendant **ALLEN FIALKOFF** was a salesman at MasterVend.

COUNT 1
Conspiracy to Commit Wire Fraud and Mail Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 4 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2004, until at least in or around February 2005, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ALLEN FIALKOFF,

did willfully, that is, with the intent to further the objective of the conspiracy, and knowingly combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

- a. to knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent

when made, and knowingly causing to be delivered certain mail matter by United States Mail and by a private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1341; and

b. to knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud, and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and knowingly transmitting and causing to be transmitted certain wire communications in interstate commerce, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for **ALLEN FIALKOFF** and his co-conspirators to unlawfully enrich themselves by obtaining money from potential business opportunity purchasers by making materially false representations, and omitting to state and concealing material facts concerning, among other things, expected profits, the services provided to purchasers, and the authenticity of MasterVend references.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which **ALLEN FIALKOFF** and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. MasterVend placed advertisements on the Internet, and in other media across the country, touting the huge profits that could supposedly be earned by purchasing a MasterVend business opportunity, and urging potential purchasers to provide contact information to MasterVend via the Internet or through a telephone number that appeared in the newspaper advertisements.

5. Potential purchasers who responded to MasterVend's advertisements were placed in touch with salespeople known as frontiers, who would explain the business opportunity. The frontiers explained that, for an investment of roughly \$9,995, a purchaser would receive 20 Sweet Tooth Sam vending machines, and introduction to a professional locating service that would place the vending machines in high-traffic locations in the purchaser's geographical area. The MasterVend purchaser would then collect money based upon use of the vending machines. MasterVend also offered a snack and soda vending machine business opportunity for \$8,999.

6. After the frontier made his or her sales pitch, "qualified" potential purchasers were transferred to another MasterVend salesperson known as a closer. The closer generally identified himself to potential purchasers as a "Territory Coordinator " who was responsible for setting up purchasers in the potential purchasers' geographic area. In truth, the closers did not specialize in any particular area of the country and took calls from any place in the United States.

7. MasterVend closers, including **ALLEN FIALKOFF**, sent potential purchasers via commercial interstate carrier professional-looking, glossy brochures touting the profits that could supposedly be made from the MasterVend business opportunity.

8. MasterVend closers, including **ALLEN FIALKOFF**, made an extended sales pitch to the potential purchaser, normally after the potential purchaser received the brochure. During this sales pitch, the closer made a number of false representations about the MasterVend business opportunity, earnings projections, earnings of prior purchasers, and the help and support MasterVend provided.

9. MasterVend closers, including **ALLEN FIALKOFF**, provided potential purchasers with the names of references who they falsely claimed purchased and had success operating MasterVend vending machines.

10. If the MasterVend closer was unsuccessful in closing the deal, MasterVend salesmen, including **ALLEN FIALKOFF**, sometimes used a transaction call "back from the dead" or "BFD." In these transactions, the salesman sometimes called the potential purchaser back within a few days or weeks in an attempt to resurrect the deal. The salesman typically falsely represented that another person had cancelled a large order of vending machines for personal reasons and that, as a result, MasterVend could offer these vending machines to the purchaser for a substantially reduced price.

11. Once purchasers agreed to make a purchase, closers instructed the purchaser to fill out a purchase order and send it back to MasterVend, along with payment for the business opportunity. Payments were made either by check via commercial interstate carrier or United States Postal Service, or by bank wire.

12. MasterVend salesmen, including **ALLEN FIALKOFF**, used a transaction called a "load" in an attempt to induce individuals who purchased the MasterVend business opportunity to purchase more vending machines. Once a purchaser sent in his or her money to MasterVend for an initial purchase and that money cleared, MasterVend salesmen, including **ALLEN FIALKOFF**, in an attempt to "load" the purchaser sometimes would contact the purchaser within a few days or weeks for the purpose of soliciting an additional investment. That salesman typically falsely claimed that another person had cancelled a large order of vending machines for personal reasons and that, as a result, MasterVend could offer these vending machines to the purchaser for a substantially reduced rate.

13. To fraudulently induce others to purchase business opportunities, **ALLEN FIALKOFF** and his co-conspirators made, and caused others to make, numerous materially false statements, and concealed and omitted to state, and caused others to conceal and omit to state, material facts, including, among others, the following:

Materially False Statements

(a) That MasterVend sold a profitable business opportunity, when in truth and in fact, there was no basis for such a claim;

(b) That 80% of MasterVend business opportunity purchasers were successful and had ordered additional vending machines from MasterVend because they had been successful, when in truth and in fact, there were no repeat buyers;

(c) That MasterVend would help secure high-traffic, profitable locations for its distributors to place their vending machines in the distributor's respective local areas by referring distributors to a vending machine locating service, when in truth and in fact, MasterVend knew that buyers were not receiving high-traffic, profitable locations from such a service;

(d) That MasterVend would provide a very high level of customer service after business opportunity purchasers received their vending machines, when in truth and in fact, MasterVend did not return the telephone calls of purchasers who had difficulty getting their vending machines located, or whose MasterVend vending machines were broken, required maintenance, or were different than the vending machines depicted in MasterVend's brochure;

(e) That certain references whom MasterVend's sales representatives encouraged potential purchasers to call had previously purchased one or more Sweet Tooth Sam or snack and

soda vending machines from MasterVend, when in truth and in fact, those references did not pay for their vending machines and did not operate their own MasterVend vending machines;

(f) That the MasterVend vending machines operated by certain references were profitable, when in truth and in fact, those references earned profit from taking calls from potential purchasers, not from Sweet Tooth Sam or snack and soda vending machines;

Omission and Concealment of Material Facts

(g) That MasterVend's principal and salesmen had a history of selling various sorts of failed business opportunities;

(h) That frequently used references were relatives of a MasterVend employee; and

(i) That MasterVend references were paid by MasterVend for speaking to potential purchasers.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2 - 7

Mail Fraud

(18 U.S.C. §§ 1341 and 2)

1. Paragraphs 1 through 4 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2004, until at least in or around February 2005, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ALLEN FIALKOFF,

did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and for the

purpose of executing such scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered certain mail matter by the United States Mail and by a commercial interstate carrier, according to the directions thereon.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for **ALLEN FIALKOFF** and his accomplices and associates to unlawfully enrich themselves by obtaining money from potential business opportunity purchasers by means of materially false statements and representations and the concealment of material facts concerning, among other things, expected profits, the services provided to purchasers, and the authenticity of MasterVend references.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 13 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

USE OF THE MAILS

5. On or about the dates specified as to each count below, **ALLEN FIALKOFF**, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly cause to be delivered by United States Mail and by a private and commercial interstate carrier, according to the directions thereon, the items identified below:

COUNT	APPROXIMATE DATE	DESCRIPTION OF ITEM SENT AND CARRIER
2	January 21, 2004	Promotional packet sent by commercial interstate carrier from MasterVend in the Southern District of Florida to J.B. in Connecticut.
3	March 23, 2004	Promotional packet sent by commercial interstate carrier from MasterVend in the Southern District of Florida to S.S. in Georgia.
4	April 19, 2004	Promotional packet sent by commercial interstate carrier from MasterVend in the Southern District of Florida to K.C. and B.C. in Texas.
5	May 13, 2004	Promotional packet sent by commercial interstate carrier from MasterVend in the Southern District of Florida to L.M. in Indiana.
6	June 1, 2004	Promotional packet sent by commercial interstate carrier from MasterVend in the Southern District of Florida to M.T. in New Jersey.
7	June 9, 2004	Promotional packet sent by commercial interstate carrier from MasterVend in the Southern District of Florida to B.G. in Kentucky.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 8 - 13
Wire Fraud
(18 U.S.C. §§ 1343 and 2)

1. Paragraphs 1 through 4 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2004, until at least in or around February 2005, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ALLEN FIALKOFF,

did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and did knowingly transmit and cause to be transmitted, by means of wire communications in interstate commerce, certain writings, signs, signals, pictures, and sounds.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for **ALLEN FIALKOFF** and his accomplices and associates to unlawfully enrich themselves by obtaining money from potential business opportunity purchasers by means of materially false statements and representations and the concealment of material facts concerning, among other things, expected profits, the services provided to purchasers, and the authenticity of MasterVend references.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 13 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

USE OF THE WIRES

5. On or about the dates specified as to each count below, **ALLEN FIALKOFF**, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses,

representations, and promises, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate commerce, certain writings, signs, signals, pictures, and sounds, as more specifically described below:

COUNT	APPROXIMATE DATE	DESCRIPTION OF WIRE COMMUNICATION
8	January 21, 2004	Telephone call between ALLEN FIALKOFF in the Southern District of Florida and J.B. in Connecticut.
9	March 23, 2004	Telephone call between ALLEN FIALKOFF in the Southern District of Florida and S.S. in Georgia.
10	April 19, 2004	Telephone call between ALLEN FIALKOFF in the Southern District of Florida and K.C. and B.C. in Texas.
11	May 13, 2004	Telephone call between ALLEN FIALKOFF in the Southern District of Florida and L.M. in Indiana.
12	June 1, 2004	Telephone call between ALLEN FIALKOFF in the Southern District of Florida and M.T. in New Jersey.
13	June 9, 2004	Telephone call between ALLEN FIALKOFF in the Southern District of Florida and B.G. in Kentucky.

In violation of Title 18, United States Code, Sections 1343 and 2.

A TRUE BILL

FOREPERSON

1 Sent to Note 4

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

For *[Signature]*

JEFFREY STEGER
TRIAL ATTORNEY
U.S. DEPARTMENT OF JUSTICE

06-20741R-LENARD / TORRES
CASE NO.

UNITED STATES OF AMERICA

vs.

ALLEN FIALKOFF,

Defendant.

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)

☒ Miami ☐ Key West
☐ FTL ☐ WPB ☐ FTPNew Defendant(s) _____
Number of New Defendants _____
Total number of counts _____

Yes _____ No _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

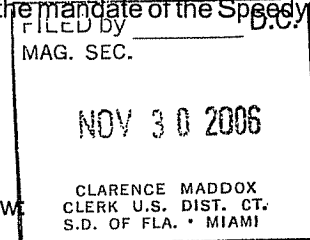
4. This case will take 10 days for the parties to try.

5. Please check appropriate category and type of offense listed below
(Check only one) (Check only one)

- I 0 to 5 days
II 6 to 10 days
III 11 to 20 days
IV 21 to 60 days
V 61 days and over

☐
☒
☐
☐
☐

Petty
Minor
Misdem.
Felony

☐
☐
☐
☒

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: _____

Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No) No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: 05-2196-RI D

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the _____

District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? ☐ Yes ☒ No
8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? ☐ Yes ☒ No
If yes, was it pending in the Central Region? ☐ Yes ☐ No
9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ☐ Yes ☒ No
10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? ☐ Yes ☒ No

for Jeffrey Steger
DOJ Trial Attorney
Court No. A5500681

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

06-20741 CR-LENARD
PENALTY SHEET

TORRES

Defendant's Name: Allen Fialkoff Case No: _____

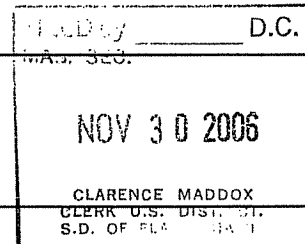
Count #: 1 - 18 U. S.C. § 1349

Conspiracy to commit wire fraud and mail fraud.

*Max Penalty: 20 years' imprisonment

Counts #: 2 - 7 - 18 U.S.C. § 1341

Mail Fraud



*Max Penalty: 20 years' imprisonment

Counts #: 8 - 13 - 18 U.S.C. § 1343

Wire Fraud

*Max Penalty: 20 years' imprisonment

Count #:

*Max Penalty: _____

*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.